

REMARKS

Introduction

The present application includes claims 1-32, wherein claims 1, 5, 12, and 21 are presented in independent form. Reconsideration and reversal of the rejection of claims 1-32 presented in the Office Action dated February 25, 2005 is respectfully requested in light of the following amendments and arguments.

Claim Objections

Claims 20, 28, 31, 32 were objected to for informalities. Claim 20 has been amended to include a reference to the first portion. Claim 28 has been amended to correct the informalities. Claims 31 and 32 have been amended in view of the Examiner's suggestions. The informalities of claims 20, 28, 31 and 32 have been amended to correct the informalities and are now believed to be in condition for allowance.

Non Statutory Double Patenting

Claims 1-32 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 43-47 of U.S. Patent No. 6,427,264. A terminal disclaimer is filed with this response. Applicants do not acquiesce to the Examiner's rejection but in an effort to expedite prosecution have chosen to file the terminal disclaimer. Applicants believe the application is now in condition for allowance. Such allowance is respectfully requested.

Prior Art Rejections

The Examiner rejected claims 1-4 and 12-20 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,481,772 to Glynn et al. (hereinafter Glynn), U.S. Patent No. 4,232,415 to Webber (hereinafter Webber).

§ 103(a) in view of Glynn

Applicants respectfully submit that the the Glynn patent does not support the Examiner's rejection of claims 1-4 and 12-20 under 35 U.S.C. § 103(a). The case law is clear that in order for the U.S. Patent and Trademark Office to "establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine the teachings. Second, there

must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.” Manual of Patent Examining Procedure (M.P.E.P.) Section 2143.

Moreover, the Patent and Trademark Office can satisfy its burden of establishing obviousness “only by showing some *objective* teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead an individual to combine the relevant teachings of the references.” In re Fine, 1837 F.2d 1071, 1073, 5 USPQ2d 1596 (Fed. Cir. 1988) (emphasis added) (citations omitted). The Federal Circuit in In re Fine stated that a “bald assertion” of substituting an element in a prior art reference would have been within the ordinary skill in the art is insufficient to support a finding of obviousness.” Id. at 1074.

The Examiner has failed to satisfy the Patent and Trademark Office burden of establishing obviousness. More particularly, the Examiner fails to show any teaching that would suggest modifying Sims et al. in the manner suggested. The prior art simply does not teach or suggest all of the limitations recited in claim 1. The Examiner’s conclusory statement that “It would have been obvious to one ordinarily skilled in the art at the time the invention was made to have ‘adapted’ Glynn et al’s or Webber’s devices, as by sizing them appropriately, to be used in a manner contemplated by the applicant” does not satisfy the requirements of 35 U.S.C. § 103 as detailed above.

Claim 1

The Glynn patent does not disclose, teach or suggest “... a first barrier positionable to extend ~~between~~ from beyond the first siderail ~~and~~ to the first vertical edge of the board to substantially fill a first gap defined therebetween ...” as recited in amended claim 1. The Examiner fails to show any objective teaching that would suggest modifying the rail apparatus as disclosed in Glynn in the manner claimed. There is simply no teaching, suggestion or motivation for one of ordinary skill in the art to modify Glynn to arrive at the claimed invention. Glynn discloses the rail apparatus to be positioned to fill a gap between two siderails and/or gaps on the rails themselves.

Therefore, Applicants believe that claim 1 is in condition for allowance with respect to Glynn. Removal of the rejection and allowance of claim 1 is respectfully requested. If the Examiner should disagree with the Applicants’ arguments, the Examiner is asked to kindly point out with particularity where the limitation is expressly disclosed.

Claims 2-4

Claims 2-4 depend from claim 1. In that claim 1 is believed to be allowable, claims 2-4 are also believed to be allowable. Removal of the rejections and allowance of claims 2-4 is respectfully requested.

Claim 12

The Glynn patent does not disclose, teach or suggest "... a first barrier positionable to substantially fill the ~~mattress~~ first siderail gap, the first barrier extending from the first siderail to the first vertical edge ..." as recited in amended claim 12. The Examiner fails to show any objective teaching that would suggest modifying the rail apparatus as disclosed in Glynn in the manner claimed. There is simply no teaching, suggestion or motivation for one of ordinary skill in the art to modify Glynn to arrive at the claimed invention. Glynn discloses the rail apparatus to be positioned to fill a gap between two siderails and/or gaps on the rails themselves.

Therefore, Applicants believe that claim 12 is in condition for allowance with respect to Glynn. Removal of the rejection and allowance of claim 12 is respectfully requested. If the Examiner should disagree with the Applicant's arguments, the Examiner is asked to kindly point out with particularity where the limitation is expressly disclosed.

Claim 13-20

Claims 13-20 depend from claim 12. In that claim 12 is believed to be allowable, claims 13-20 are also believed to be allowable. Removal of the rejections and allowance of claims 12-14, 19, and 20 is respectfully requested.

§ 103(a) in view of Webber

Applicants respectfully submit that the Webber patent does not support the Examiner's rejection of claims 1-4 and 12-20 under 35 U.S.C. § 103(a).

Claim 1

The Webber patent does not disclose, teach or suggest "... a first barrier positionable to extend ~~between~~ from the first siderail ~~and~~ to the first vertical edge of the board to substantially fill a first gap defined therebetween, ..." as recited in amended claim 1. The Examiner fails to show any objective teaching that would suggest modifying the mattress sling as disclosed in Webber in the manner claimed. The mattress sling simply does not extend from the siderail to the first vertical edge of the board.

Therefore, Applicants believe that amended claim 1 is in condition for allowance with respect to Webber. Removal of the rejection and allowance of claim 1 is respectfully requested. If the Examiner should disagree with the Applicants' arguments, the Examiner is asked to kindly point out with particularity where the limitation is expressly disclosed.

Claims 2-4

Claims 2-4 depend from claim 1. In that claim 1 is believed to be allowable, claims 2-4 are also believed to be allowable. Removal of the rejections and allowance of claims 2-4 is respectfully requested.

Claim 12

The Webber patent does not disclose, teach or suggest "... a first barrier positionable to substantially fill the ~~mattress~~ first siderail gap, the first barrier extending from the first siderail to the first vertical edge, ..." as recited in amended claim 12. The Examiner fails to show any objective teaching that would suggest modifying the sling as disclosed in Webber in the manner claimed. There is simply no teaching, suggestion or motivation for one of ordinary skill in the art to modify Webber to arrive at the claimed invention. The mattress sling simply does not extend from the siderail to the first vertical edge of the board.

Therefore, Applicants believe that claim 12 is in condition for allowance with respect to Webber. Removal of the rejection and allowance of claim 12 is respectfully requested. If the Examiner should disagree with the Applicants' arguments, the Examiner is asked to kindly print out with particularity where the limitation is expressly disclosed.

Claim 13-20

Claims 13-20 depend from claim 12. In that claim 12 is believed to be allowable, claims 13-20 are also believed to be allowable. Removal of the rejections and allowance of claims 12-14, 19, and 20 is respectfully requested.

Appeal

Without undue speculation or otherwise, the Applicants are unable to find support for the Examiner's rejections of at least claims 2-4 and 13-20 other than by way of the reasons for rejection of the independent claims, as these dependent claims contain additional limitations not recited in the independent claims. To enable the Applicants to better respond to any potential remaining rejections on appeal, Applicants respectfully request that the Examiner provide additional specificity for the rejections of the dependent claims.

Final Remarks

In view of the foregoing amendments and remarks, Applicants submit that the application is now in condition for allowance. A Notice of Allowance is earnestly solicited.

In the event that the Examiner has any questions related to this Amendment or to the application in general, the undersigned would appreciate the opportunity to address those questions in a telephone interview to expedite the prosecution of this application for all concerned.

If necessary, Applicants request that this Response be considered a request for an extension of time for a time appropriate for the response to be timely filed. Applicants request that any required fees needed beyond those submitted with this Response be charged to the account of Bose McKinney & Evans LLP, Deposit Account Number 02-3223.

Respectfully submitted,

BOSE McKINNEY & EVANS LLP

A handwritten signature in black ink, appearing to read 'Brion G. St. Amour', is written over a horizontal line.

Brion G. St. Amour
Reg. No. 55,640

Indianapolis, Indiana
(317) 684-5416

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